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JAN 28 2005

TECHNOLOGY CENTER 3600

Patent Department
Taylor, Porter, Brooks & Phillips, LLP
P.O. Box 2471
Baton Rouge, LA 70821-2471

In re Application of
John W. Lynn
Application No. 10/603,134
Filed: June 24, 2003
For: ENHANCING MATURATION OF
OOCYTES IN BIVALVES

DECISION ON PETITION
UNDER 37 CFR 1.181
TO REVIEW PROPRIETY
OF OFFICE ACTION

This is in response to applicant's petition under 37 CFR 1.181 filed October 25, 2004 requesting Supervisory review of the Office action mailed October 5, 2004.

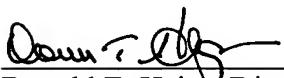
The petition is **GRANTED**.

Applicant is seeking review of whether the Examiner has written a proper prior art rejection. Applicant argues that the above referenced Office action does not comply with 37 C.F.R. § 1.104 which requires that “[i]n rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied upon must be designated as nearly as practical.” Applicant argues that the Examiner has not set forth a proper rejection in that the Examiner failed to offer supporting details or rationale, e.g., the Examiner failed to specify with particularity what portions of applicant’s background section of the specification are being relied upon, and why the cited portions are said either to anticipate the claimed inventions, or why it would have been obvious to modify the cited portions to make the claimed invention.

After a careful review of the application file and thorough consideration of the position taken by applicant, it is clear that the above referenced Office action is not in compliance with 37 C.F.R. § 1.104. The examiner has merely taken the entire background section of the specification of the instant application and designated it as “Applicant’s Admitted Prior Art (AAPA)” and rejects the claims under 35 U.S.C. § 102(a) as being anticipated by or under 35 U.S.C. § 103(a) as being unpatentable over AAPA. The examiner has failed to specify with particularity where in the prior art any of the limitations of the language of the claims might be found. Furthermore, the examiner failed to clearly explain the pertinence of each reference and each rejected claim

specified, as required by 37 C.F.R. § 1.104. Therefore, applicant can not prepare a viable response to the above referenced Office action.

Accordingly, the Office action of October 5, 2004 is hereby vacated. The application will be returned to the examiner for immediate preparation of a non-final office action.



Donald T. Hajec, Director
Patent Technology Center 3600
(703) 306-4180

DH/tl: 1/25/05
